

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WALTER TYRONE GREEN and	:	CIVIL ACTION
GERTRUDE GREEN,	:	
Plaintiffs,	:	
	:	
v.	:	NO. 01-CV-1270
	:	
ASSOCIATES COMMERCIAL	:	
CORP., et al.,	:	
Defendants.	:	

**ORDER**

AND NOW, this     day of February, 2003, upon consideration of (i) Associate Commercial Corporation's ("Associates") Motion to Dismiss Plaintiff's Complaint and for Other Sanctions based on Plaintiff's repeated disregard of this Court's orders (Document No. 37, filed November 19, 2002); and (ii) Associates' Letter Brief in further support of its Motion, it is hereby **ORDERED** as follows.

Rule 41(b) of the Federal Rules of Civil Procedure provides that a court may grant a defendant's motion for involuntary dismissal based on "the failure of the plaintiff to prosecute or to comply with [Federal Rules of Civil Procedure] or any order of court." In Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863 (3d Cir. 1984), the Third Circuit expounded on Rule 41(b) by announcing a non-exclusive six-prong test for assessing Rule 41(b) motions--the Poulis factors. The six Poulis factors are: (i) the extent of the party's personal responsibility; (ii) the prejudice to the adversary; (iii) a history of dilatoriness; (iv) whether the conduct of the party or the attorney was willful or in bad faith; (v) the effectiveness of sanctions other than dismissal; and (vi) the meritoriousness of the claim or defense. Id. at 868. See also Emerson v. Thiel College, 296 F.3d 184, 190 (3d Cir. 2002).

The Third Circuit acknowledged that a dismissal with prejudice, such as a Rule 41(b) dismissal, is a “drastic” sanction, Poulis, 747 F.2d at 867, and that “the harsher the sanction being imposed, the more the balance will have to be against the party being sanctioned to justify the sanction,” Estate of Spear v. C.I.R., 41 F.3d 103, 111 (3d Cir. 1984). Rule 41(b) is an extreme sanction and must be issued with caution. See Poulis, 747 F.2d at 868. With these principles of restraint in mind, this Court has carefully balanced the six Poulis factors, and hereby concludes that Plaintiff’s Motion is **DENIED**.

BY THE COURT:

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Legrome D. Davis, U.S.D.J.